

## **2006 Legislative Changes to Sex Offender Registry & DNA Samples from Felons**

Senate Enrolled Act 6 (Public Law 139), Senate Enrolled Act 12 (Public Law 140), Senate Enrolled Act 246 (Public Law 6), and House Enrolled Act 1155 (Public Law 173) made numerous changes to the sex offender registry and local registration laws for adult sex offenders. The changes were effective July 1, 2006. Senate Enrolled Act 12 and House Enrolled Act 1155 also made several changes to the requirements for collection of DNA samples. These changes were also effective July 1, 2006. Below is a summary of the changes.

1. Oversight of the Sex Offender Registry transferred to the Department of Correction (IC 11-8-2-12.4)
  - DOC is now responsible for the oversight of the registry, rather than the Indiana Criminal Justice Institute
  - The Sex Offender Directory is eliminated and its functions transferred to the sex offender registry
  - The registration statute is now IC 11-8-8 (formerly IC 5-2-12)
  - DOC is required to establish a “format” for registration
  - DOC is required to inform and train judges, prosecuting attorneys, law enforcement officials, parole officers, probation officers, and community corrections officials concerning the requirements of the sex offender registry
  - DOC must update the registry daily and make the registry available on the internet (IC 11-8-2-13)
  - DOC must register incarcerated offenders prior to release
  - DOC may reduce good time credit for an offender who does not participate in a sex offender treatment program or who does not register before being released from incarceration
2. Registration—definition of “offender” (IC 11-8-8-5)
  - Definition of sex offender expanded to include a person who is required to register in any jurisdiction (this is important for persons transferring to Indiana under the Interstate Compact)

### 3. General registration requirements (IC 11-8-8)

- Sex offenders committed to DOC shall register with the Department before release from incarceration (DOC forwards this information to the local law enforcement authority where the offender will reside)
- Sex offenders not committed to DOC must register within 7 days of being placed on probation
- Sex offenders subject to registration requirements must carry a valid Indiana driver's license or ID (Class A misdemeanor for failure to possess identification)
- As a condition of probation, a sex offender shall not establish a new residence within one mile of the victim of the offense unless granted a waiver by the court
- A sex offender living in a "temporary residence" must register within 72 hours of moving into the residence and at least once every 7 days while living in the temporary residence

### 4. Sexually violent predators (IC 35-38-1-7.5)

- Definition expanded to include offenders who commit rape, criminal deviate conduct, child molesting as a Class A or Class B felony, or vicarious sexual gratification, and offenders who commit sex offenses listed in IC 11-8-8-5 while having a previous unrelated conviction for an offense listed in IC 11-8-8-5 for which the person is required to register
- Whenever a court sentences a person for a sex offense listed in IC 11-8-8-5, the court must determine if the person is a sexually violent predator under IC 35-38-1-7.5(b). If the court does not find the person to be a sexually violent predator under subsection (b), the court shall consult with 2 board certified psychologists/psychiatrists to determine if the person is a sexually violent predator under subsection (a).
- If the court finds a person to be a sexually violent predator, the court shall send notice of its finding to DOC (IC 35-38-1-7.5(f)(2))
- Sexually violent predators must register within 72 hours of being released from prison or placed on probation, parole or home detention (IC 11-8-8-7(h))
- A juvenile court may not appoint a sexually violent predator to serve as the guardian or custodian of a child (IC 31-30-1-2.5)

- Sexually violent predators may be deprived of credit time earned at DOC if the person refuses to register as a sex offender before release or refuses to participate in a sex offender treatment program (IC 35-50-6-5(a)(5)&(6))
- Sexually violent predators shall be placed on lifetime parole after release from prison (IC 35-50-6-1(e))
- If a person being supervised on lifetime parole is also required to be supervised by a court, probation department, community corrections department or community transition program upon release from imprisonment, the parole board may permit the other supervising agency to exercise all or part of the parole board's supervisory responsibility during the period in which the other supervising agency is required to supervise the person, if supervision by the other supervising agency will be at least as stringent and at least as effective as supervision by the parole board (IC 35-50-6-1(g))
- A sexually violent predator must notify local law enforcement when the person will be absent from his "principle place of residence" for more than 72 hours and must notify where the person will be located during the absence (if the sexually violent predator will be in another Indiana county for more than 72 hours, the person must inform local law enforcement of the location and length of the stay). Sexually violent predators who do not comply with this requirement commit Failure to Notify, a Class A misdemeanor (IC 11-8-8-18)
- A sexually violent predator who knowingly or intentionally works for compensation or as a volunteer on school property, at a youth program center or a public park commits Unlawful Employment Near Children By a Sex Offender, a Class D felony (IC 35-42-4-10)

##### 5. Other sex offender-related statutory changes

- An "offender against children" (defined as a sexually violent predator or a person convicted of child molesting, child exploitation, child solicitation, child seduction or kidnapping if the victim is less than 18) who knowingly or intentionally resides within 1000 feet of school property, a youth program center or a public park, or establishes a residence within one (1) mile of the victim of the offense, commits Sex Offender Residency Offense, a Class D felony (IC 35-42-4-11)

- Under IC 11-8-8-9(c), if a sex offender is placed on probation or in a community corrections program without being confined in a penal facility, the probation office serving the court in which the sex offender is sentenced shall perform the duties required under IC 11-8-8-9(a) and (b). (Inform the sex offender of the duty to register and require the sex offender to sign a written statement acknowledging that the sex offender was informed of the duty to register; obtain address where offender expects to reside; transmit to local law enforcement the sex offender's name, address, and offense; within 72 hours of release, transmit the offender's fingerprints, photograph, identifying factors, address, mental health treatment history, criminal history, and information as to whether the sex offender has been determined to be a sexually violent predator.

#### 6. DNA samples from felony offenders

- IC 35-38-2-2.3 amended to add section (g): "As a condition of probation, a court shall require a person: (1) convicted of an offense described in IC 10-13-6-10; (2) who has not previously provided a DNA sample in accordance with IC 10-13-6; and (3) whose sentence does not involve a commitment to the department of correction; to provide a DNA sample as a condition of probation." (The offenses described in IC 10-13-6-10 are offenses against the person (IC 35-42) and burglary (IC 35-43-2-1)).
- IC 35-38-1-27 added as a new section. If the court imposes a sentence that does not involve a commitment to DOC, the court shall require a person convicted of an offense listed in IC 10-13-6-10 and who has not previously provided a DNA sample to provide a DNA as a condition of the sentence. If the person is not confined at the time of sentencing, the agency supervising the person after sentencing shall establish the date, time and location for the person to provide the sample. The supervising agency must require that the DNA sample be provided within 7 days of sentencing.